



DEPARTMENT OF HIGHER EDUCATION & WORKFORCE DEVELOPMENT

COMPLIANCE UPDATE By Kim Slote, Assistant Associate

FINAL RULE: DISTANCE EDUCATION AND INNOVATION

The U.S. Department of Education issued a [Federal Register Notice Sep. 2, 2020](#). The Final Rule amended the Institutional Eligibility regulations in the general, establishing eligibility, maintaining eligibility, and losing eligibility sections related to distance education and innovation. In addition, some of the Student Assistance General Provisions regulations have been amended. The effective date of these regulations is July 1, 2021.

The major provisions from the Final Rule are summarized below.

- *Clarify that when calculating the number of correspondence students, a student is considered “enrolled in correspondence courses” if correspondence courses constitute 50 percent or more of the courses in which the student enrolled during an award year;*
- *Limit the requirement for the Secretary’s approval to an institution’s first direct assessment program at each credential level;*
- *Require institutions to report to the Secretary when they add a second or subsequent direct assessment program or establish a written arrangement for an ineligible institution or organization to provide more than 25 percent, but no more than 50 percent, of a program;*
- *Require prompt Department action on any application an institution submits to the Secretary seeking a determination that it qualifies as an eligible institution and on any reapplications for a determination that the institution continues to meet the requirements to be an eligible institution for HEA programs;*
- *Allow students enrolled in eligible foreign institutions to complete up to 25 percent of an eligible program at an eligible institution in the United States; and clarify that, notwithstanding this provision, an eligible foreign institution may permit a Direct Loan borrower to perform research in the United States for not more than one academic year if the research is conducted during the dissertation phase of a doctoral program;*
- *Clarify the conditions under which a participating foreign institution may enter into a written arrangement with an entity that does not participate in the title IV, HEA*

- programs;*
- *Provide flexibility to institutions to modify their curricula at the recommendations of industry advisory boards and without relying on a traditional faculty-led decision-making process;*
 - *Provide flexibility to institutions when conducting clock-to-credit hour conversions to eliminate confusion about the inclusion of homework time in the clock-hour determination.*
 - *Clarify the eligibility requirements for a direct assessment program;*
 - *Clarify, in consideration of the challenges to institutions posed by minimum program length standards associated with occupational licensing requirements, which vary from State to State, that an institution may demonstrate a reasonable relationship between the length of a program, as defined in 20 U.S.C. 1001(b)(1), and the entry-level requirements of the occupation for which that program prepares students;*
 - *Clarify that a student is not considered to have withdrawn for purposes of determining the amount of title IV grant or loan assistance that the student earned if the student completes all the requirements for graduation for a non-term program or a subscription-based program, if the student completes one or more modules that comprise 49 percent or more of the number of days in the payment period, or if the institution obtains written confirmation that the student will resume attendance in a subscription-based or non-term program;*
 - *Remove provisions pertaining to the use and calculation of the Net Present Value of institutional loans for the calculation of the 90/10 ratio for proprietary institutions, because the provisions are no longer applicable;*
 - *Clarify the satisfactory academic progress requirements for non-term credit or clock programs, term-based programs that are not a subscription-based program, and subscription-based programs;*
 - *Clarify that the Secretary will rely on the requirements established by an institution's accrediting agency or State authorizing agency to evaluate an institution's appeal of a final audit or program review determination that includes a finding about the institution's classification of a course or program as distance education, or the institution's assignment of credit hours;*
 - *Clarify that the Secretary may deny an institution's certification or recertification application to participate in the title IV, HEA programs if an institution is not financially responsible or does not submit its audits in a timely manner; and*
 - *Clarify that an institution is not financially responsible if a person who exercises substantial ownership or control over an institution also exercised substantial ownership or control over another institution that closed without executing a viable teachout plan or agreement.*